

Serial No. 09/461,846  
Amendment After Final  
April 8, 2002  
Page 9 of 19

### REMARKS

With these amendments, Claims 1-13, 35-43, 45, and 47-62 are pending. Claims 44 and 46 are cancelled herein. Claim 2 has been amended to clarify that the invention of that claim includes any articles that comprise medical devices. Claim 4 has been amended to depend from Claim 2. Claims 6, 7, 50 and 51 are amended to delete the reference to "derivatives." Claim 13 is amended to clarify the claim by stating that the article comprises a composition, which, in turn, comprises the listed constituents. This amendment does not broaden the scope of this allowed claim and thus will not require additional searching or consideration. Method Claims 35-40 have been amended to conform to changes previously made to related article Claims 1 and 13. These claims now clarify the identity of the colloid set forth in Claims 1 and 13. Claim 35 has been further amended to clarify the claimed process by specifying explicitly the dipping or spraying that may be used in that process. This change does not alter the scope or meaning of the claim. Claim 36 has been further amended to correct typographic errors, to delete superfluous references to an "article," and to clarify that the drying in that process involves drying a composition that comprises a solution, dispersion, or combination thereof and not simply a solution. Claim 37 has been further amended to depend from Claim 36 rather than existing as an independent claim. Claim 38 has been further amended to correct typographical errors and to delete unnecessary uses of the words "article" and "step." Claim 43 has been amended to add the language of Claims 44 and 46 (cancelled herein) to the claim. Claim 47 has been amended to clarify that the article comprises a medical device. New Claims 57-62 are method claims similar to Claims 35-40 except that they define the colloid as comprising at least one metal salt, at least one metal oxide, or a combination of at least one metal salt and at least one metal oxide and they contain the same additional conditions that are added to Claim 43 herein.

ATLLIB02 73812.1

B

Serial No. 09/461,846  
Amendment After Final  
April 8, 2002  
Page 10 of 19

With the amendments herein, the total number of claims (39) remains less than the total number of claims previously paid for (40). The total number of pending independent claims (13) exceeds the number previously paid for (10). No other fees are believed due; however the Commissioner is hereby authorized to charge \$252.00 to cover the fees for the additional independent claims, as well as charge any other fees that may be required, or credit any overpayment, to Deposit Account No. 11-0855.

**Amendment Pursuant to 37 C.F.R. §1.116 or, in the Alternative, Request to Withdraw Finality**

A Restriction Requirement mailed May 1, 2001 in this application required Applicant to elect between four different Groups of claims. Applicant elected what was described by the Restriction Requirement as Group I, including Claims 1-13, drawn to an article. As stated by Applicant in response to restriction requirement mailed May 30, 2001, Claims 35-40, placed in Group IV, are drawn to a method of making the product claimed in the elected Group I. Therefore, in accordance with M.P.E.P. § 821.04, Applicant stated the understanding that upon a finding of allowable subject matter for Claims 1-13, Claims 35-40 would be rejoined.

Claims 1-13, as amended, either have been allowed or are being placed in condition for allowance herein. Claims 36-40 are amended herein to contain all of the limitations of article Claims 1 or 13. In view of M.P.E.P. § 821.04 and the amendments to Claims 36-40, Applicant respectfully requests rejoinder of Claims 35-40 and examination and allowance thereof.

ATLLIB02 77812.1

Serial No. 09/461,846  
Amendment After Final  
April 8, 2002  
Page 11 of 19

Claims 43-53 were added to this application in an amendment contained in the Response to Office Action mailed November 9, 2001. These are article claims that reflect a different approach to amending the original Group I claims. With the amendments herein, Claims 43-53 are being placed in condition for allowance. New Claims 57-62 are similar to the original Group IV claims (Claims 35-40) and differ only in that they contain the conditions of Claim 43 rather than Claim 1 or Claim 13. Specifically, Claims 1-13 and 36-40 provide that the colloid comprises a plurality of metal salts, a plurality of metal oxides, or a combination of at least one metal salt and at least one metal oxide. By contrast, Claims 43-53 and 57-62 require at least one metal salt or oxide, or a combination thereof, but also require that the article comprises a medical device and that the coating composition is located on at least one exposed surface of the article. Examination and allowance of Claims 57-62 along with Claims 35-40 is therefore appropriate. This amendment places Claims 35-40 in condition for allowance, and new Claims 57-62 are part of Group IV and are also in condition for allowance.

Although six new claims (Claims 57-62) are added, two claims (Claims 44 and 46) are deleted herein. After these amendments, the total number of claims will be 39, which is fewer than the total number of claims originally filed and paid for (40). Accordingly, applicant respectfully submits that this amendment after final rejection is appropriate to 37 C.F.R. §1.116.

In the event that this amendment is not entered for any reason, Applicant respectfully requests, in the alternative, withdrawal of finality of the February 7, 2002 Office Action to allow rejoinder and examination of all Group IV claims. This request is proper in view

ATLJIB02 73812.1

B

Serial No. 09/461,846  
Amendment After Final  
April 8, 2002  
Page 12 of 19

of the rejoinder of Claims 35-40 and the need for examination and allowance of Claims 35-40 and 57-62.

Claim Rejections Under 35 U.S.C. § 112, second paragraph

The Office Action rejects claims 6 and 7 under 35 U.S.C. §112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. The Office Action states that the word "derivative(s)" renders the claim indefinite because the metes and bounds of "derivative(s)" has not been established in the specification.

Claims 6 and 7 have been amended and no longer contain the words "derivative" or "derivatives." These are dependent claims specifying specific polymers. This amendment to Claims 6 and 7 should not be interpreted as excluding specific polymers or derivatives outside the scope of the independent claims. Accordingly, Applicant respectfully submits that this rejection has been overcome.

Claim Rejection Under 35 U.S.C. §103

The Office Action states that Claims 43, 45-47 and 49-53 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Pat. No. 5,357,656 to Dresdner, Jr. (*Dresdner*). The Office Action states that Applicant's arguments have been fully considered but are not considered persuasive. The Office Action states that the gel between the two surface layers coats both layers and that every layer in a multi layer article does coat all joining layers. The Office

ATLL1802 73812.1

B

Serial No. 09/461,846  
Amendment After Final  
April 8, 2002  
Page 13 of 19

Action states that the open language does not restrict the number of layers and that the location of the coating is not specified. The Office Action thus concludes that the rejection is maintained.

The Office Action further states that Claims 44, 48 and 54-56 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 43 has been amended and now contains the conditions of Claims 44 and 46. As such, Claim 43 now contains all of the conditions of former Claim 44, which the Office Action states would be allowable if rewritten in independent form. Claims 44 and 46 have been cancelled and Claims 45 and 47-56 all depend from Claim 43. Applicant respectfully submits that the rejection of Claims 43, 45-47, and 49-53 and the objection to Claims 44, 48, and 54-56 have been overcome.

#### Maintenance of Claims 35-40

The Office Action states that a complete reply to the final objection must include cancellation of non-elected Claims 35-40 or other appropriate action. For reasons stated above Claims 35-40 have not been cancelled and rejoinder and allowance of those claims has been requested. Applicant respectfully submits that this request is an appropriate action.

#### INFORMATION DISCLOSURE STATEMENT

A Supplemental Information Disclosure Statement (IDS) was filed in this application on December 18, 2001. The February 7, 2002 Office Action did not include Form

ATLJIB02 73612.1

Serial No. 09/461,846  
Amendment After Final  
April 8, 2002  
Page 14 of 19

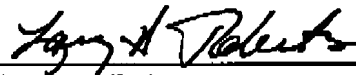
PTO/SB/08 for that Supplemental IDS. A complete copy of the Supplemental IDS as originally filed is attached (without an additional copy of the cited references that accompanied the original.) Since filing of the Supplemental IDS, Applicant has obtained an English translation of the cited German reference DE 3026258 A1. A copy of the translation is provided herewith to assist and to expedite examination.

Applicant respectfully requests that the Examiner consider the reference listed in the December 18, 2001 Supplemental IDS and return a copy of the completed Form PTO/SB/08.

Applicant respectfully submits that the foregoing is a complete response to the Office Action dated February 7, 2002, and that all pending claims are patentable in light of the above remarks.

For the reasons set forth above, the present application is believed to be in condition for allowance. Early and favorable consideration is earnestly solicited, Examiner is invited and encouraged to contact the undersigned attorney of record at (404) 745-2409 if such contact will facilitate the examination of the application.

Respectfully submitted,

  
Larry A. Roberts  
Reg. No. 31,871

KILPATRICK STOCKTON LLP  
1100 Peachtree Street, N.E.  
Suite 2800  
Atlanta, GA 30309-4530  
Telephone: (404) 815-6500  
Facsimile: (404) 815-6555  
Docket No.: 02706-0520 (42276-210208)

ATLLIB02 73812.1